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JAMES D. MAHER

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IN THE

# Supreme Court of the United States.

OCTOBER TERM, 1920. No. 1.

THE UNITED STATES OF AMERICA,

*Appellant,*

*vs.*

LEHIGH VALLEY RAILROAD COMPANY, LEHIGH VALLEY COAL COMPANY, *et al.*

## MOTION *RE* MANDATE.

EDGAR H. BOLES,

*Counsel for* LEHIGH VALLEY RAILROAD COMPANY and DELAWARE, SUSQUEHANNA & SCHUYLKILL RAILROAD COMPANY.

The Evening Post Job Printing Office, Inc., 154 Fulton St., N. Y.

IN THE

# Supreme Court of the United States,

OCTOBER TERM, 1920. No. 1.

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UNITED STATES OF AMERICA,
Appellant,

vs.

LEHIGH VALLEY RAILROAD COMPANY,
LEHIGH VALLEY COAL COMPANY,
*et al.*

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To A. MITCHELL PALMER, Attorney General,
WM. L. FRIERSON, Solicitor General.

GENTLEMEN: Please take notice that on Thursday, December 16, 1920, at the opening of court, or as soon thereafter as counsel can be heard, the undersigned will submit to the Supreme Court of the United States a motion to modify the terms for the mandate, or to dismiss the bill as against the Delaware, Susquehanna and Schuylkill Railroad Company in the above entitled case, copies of which motion are handed you herewith.

Respectfully,

EDGAR H. BOLES,
*Counsel for* Lehigh Valley Railroad Company and Delaware, Susquehanna & Schuylkill Railroad Company.

IN THE

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1920. No. 1

UNITED STATES OF AMERICA,
Appellant,

vs.

LEHIGH VALLEY RAILROAD COMPANY,
LEHIGH VALLEY COAL COMPANY,
*et al.*

COME NOW, the Lehigh Valley Railroad Company and the Delaware, Susquehanna & Schuylkill Railroad Company, parties named in the above entitled case, and request the Court that the mandate or instructions to the District Court with reference to the form of decree to carry into effect the opinion of this Court handed down on December 6, 1920, be modified in respect of the separation of the Lehigh Valley Railroad Company and the Delaware, Susquehanna & Schuylkill Railroad Company.

The reasons for this request are as follows:

1. It is respectfully suggested that no violation of the Sherman Law will occur through the continued ownership by the Lehigh Valley Railroad Company of the stock of the Delaware, Susquehanna & Schuylkill Railroad Company, or the possible merger of the two companies.

(*a*) The Delaware, Susquehanna & Schuylkill Railroad Company was incorporated under general

law in the State of Pennsylvania in the year 1890 and filed Articles of Association which specifically confined its construction to a limited area in the State of Pennsylvania. That is to say, its Articles of Association (R. 2128) stated the place of construction as follows: "Beginning at a point at or near the village of Drifton, in the County of Luzerne, and extending via the village of Eckley, to a point at or near the village of Gowen, which is situate at the junction of Luzerne, Schuylkill and Columbia Counties, all in the State of Pennsylvania". The fourth Article of Association (R. 2129) provided "that the length of said railroad will be, as near as may be, thirty miles, and the name of each county in the State through or into which it is made, or intended to be made, is as follows, namely: Luzerne, Carbon and Schuylkill".

(*b*) The Delaware, Susquehanna & Schuylkill Railroad Company at one time had 43.32 miles of first track and 33.19 miles of other track, a total of 76.51 (R. 617). Because of improved mining and operating conditions, some of the railroad property has fallen into disuse and today the Company has 21 miles of first track and approximately 15 miles of other tracks, or a total of 36. The locomotives and cars which it owned in 1905 (the time of the purchase of its capital stock by the Lehigh Valley Railroad Company), have long since been worn out and today the Company owns no motive power or equipment and is accordingly not in a position to do a railroad business.

(*c*) A part of the Delaware, Susquehanna & Schuylkill Railroad track paralleling a track of the Lehigh Valley Railroad Company between Tomhicken and Long Run, Luzerne County, Pa., a dis-

tance of 6.7 miles, is used as one track of a double track operation jointly by the Lehigh Valley Railroad Company and the Pennsylvania Railroad Company, and constitutes an important double track link in the railroad systems of the Lehigh Valley Railroad Company and the Pennsylvania Railroad Company.

(*d*) The wrong which this Court has found to have occurred by reason of the purchase in 1905 of all of the stock of the Delaware, Susquehanna & Schuylkill Railroad Company as one factor in a group of transactions will be entirely removed by the execution of the decree to be made in this case respecting the severance of intercorporate relations with the Lehigh Valley Coal Company and Coxe Bros. & Co., Inc. That is to say, after the decree in that respect has been carried out, the Delaware, Susquehanna & Schuylkill Railroad Company will be but a connecting link or group of gathering tracks, the longest of which is only 10.8 miles, for serving several wholly independent collieries.

In the coal regions the Lehigh Valley Railroad system is built up, as this record shows, by the consolidation or grouping of a number of gathering lines, and it seems now entirely in the interest of justice that, with the separation of Coxe Bros. & Co., Inc., the Lehigh Valley Railroad Company should be permitted to retain the Delaware, Susquehanna & Schuylkill Railroad Company, rather than sell it to one of its competitors, whose relation to the traffic will be no different or otherwise than that of the Lehigh Valley Railroad Company itself.

(*e*) The sale of the property could as a practicable matter be made solely to some railroad system competitive with that of the Lehigh Valley Rail-

road Company, the three neighboring railroads being those of the Pennsylvania Railroad Company, the Philadelphia & Reading Railway Company and the Central Railroad Co. of New Jersey. The Coxe Bros. & Co., Inc., properties are tributary to each of those railroad systems. Hence, any violation of law involved in the future ownership of the Delaware, Susquehanna & Schuylkill Railroad by the Lehigh Valley Railroad Company, would equally be involved in a like ownership by a competitor of the Lehigh Valley Railroad Company. In other words, there seems to be no just end to be gained by obliging the Lehigh Valley Railroad Company to sell this comparatively small piece of railroad property to one of its competitors.

(*f*) The record in this case is clear that the Delaware, Susquehanna & Schuylkill Railroad Company was never a competitor in any substantial way of the Lehigh Valley Railroad Company (R. 351-366), and the opinion of this Court does not so find and there is no indication whatever from the testimony that it was ever built or intended to be built as a competitor of the Lehigh Valley Railroad.

(*g*) The trackage contract of 1894 granted an outlet to a small railroad which had no charter powers to build beyond three adjoining counties in the State of Pennsylvania. It is respectfully suggested that the trackage contract has not in itself been found to have been an act in violation of Sections 1 or 2 of the Sherman Act. Moreover, the trackage contract has by its terms expired (R. 357, 398).

2. There is no economic reason why Coxe Bros. & Co., Inc., and the Delaware, Susquehanna & Schuyl-

kill Railroad Company should be sold together or otherwise returned to their original status or relations. It is exceptional and virtually unique, for a mining company to have its own gathering or assembling railroad. From a legal standpoint it seems imperative indeed that they should be separated, because the opinion of this Court states that the mandate shall be that certain corporations, among which are Coxe Bros. & Co., Inc., and the Delaware, Susquehanna & Schuylkill Railroad Company, shall be separated in such manner "as may be necessary to establish their entire independence of and from each other". If, therefore, the proposed instructions are not changed, it will be necessary that the Delaware, Susquehanna & Schuylkill Railroad Company shall be separately sold and placed in a situation wherein it never was before, inasmuch as the company was originally incorporated by, and solely owned and operated in the interest of Coxe Bros. & Co., Inc. Such separate sale would unquestionably result in the ultimate drift of said property into one of the adjoining railroad systems competitive with the Lehigh Valley Railroad system, and from both a legal and economic standpoint, the situation would be no different than if the Lehigh Valley Railroad Company were permitted to retain the property. All the legal result intended by this Court will appropriately be brought about by the disposition of the stock of Coxe Bros. & Co., Inc.

3. The Interstate Commerce Commission has been clothed by Congress (Section 5 of the Interstate Commerce Act as amended August 24, 1912, and February 28, 1920), with power to determine the propriety of railroad consolidations in the United States, particularly in the light of the "anti-trust

laws" (paragraph 8 of said Section 5). Therefore, it would seem appropriate that, after the Lehigh Valley Railroad Company has become separate from all corporate and financial interest in the Lehigh Valley Coal Company and Coxe Bros. & Co., Inc., and moves to the status of a carrier and a carrier only, serving wholly independent producers and shippers of anthracite, the Interstate Commerce Commission should be permitted to determine the propriety of a consolidation of the Delaware, Susquehanna & Schuylkill Railroad Company with the Lehigh Valley Railroad Company, and that the mandate and instructions in this case to the District Court should be so worded as not to preclude the defendants Lehigh Valley Railroad Company and Delaware, Susquehanna & Schuylkill Railroad Company from laying the propriety of a merger or consolidation between them, before the Interstate Commerce Commission for action under Section 5 aforesaid. The Delaware, Susquehanna & Schuylkill Railroad Company's properties are naturally appropriate extensions of the collecting or gathering tracks of the Lehigh Valley Railroad Company in the anthracite region.

WHEREFORE, it is respectfully requested that the mandate in this case do not prohibit the continued ownership by the Lehigh Valley Railroad Company of the capital stock of the Delaware, Susquehanna & Schuylkill Railroad Company, or, to accomplish the same result, that the bill be dismissed as to the Delaware, Susquehanna & Schuylkill R. R. Co.

EDGAR H. BOLES,
*Counsel for* Lehigh Valley Railroad Company and Delaware, Susquehanna & Schuylkill Railroad Company.

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# In the Supreme Court of the United States.

OCTOBER TERM, 1918.

THE UNITED STATES OF AMERICA, APPELLANT,
*v.*
LEHIGH VALLEY RAILROAD COMPANY ET AL. } No. 6.

*APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.*

THE UNITED STATES OF AMERICA, APPELLANT,
*v.*
READING COMPANY ET AL. } No. 11.

*APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.*

READING COMPANY ET AL., APPELLANTS,
*v.*
THE UNITED STATES OF AMERICA. } No. 13.

*APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.*

THE UNITED STATES OF AMERICA, APPELLANT,
*v.*
UNITED STATES STEEL CORPORATION ET AL. } No. 22.

*APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY.*

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EASTMAN KODAK COMPANY, ETC., ET AL., appellants,
*v.*
THE UNITED STATES OF AMERICA. — No. 23.

*APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF NEW YORK.*

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ASSOCIATED BILLPOSTERS AND DISTRIBUTORS of the United States and Canada et al., appellants,
*v.*
THE UNITED STATES. — No. 38.

*APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.*

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THE UNITED STATES, APPELLANT,
*v.*
AMERICAN CAN COMPANY ET AL. — No. 66.

*APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.*

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THE UNITED STATES, APPELLANT,
*v.*
QUAKER OATS COMPANY ET AL. — No. 86.

*APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.*

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THE UNITED STATES, APPELLANT,
*v.*
SOUTHERN PACIFIC COMPANY ET AL. — No. 224.

*APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF UTAH.*

CORN PRODUCTS REFINING COMPANY ET AL., appellants, v. THE UNITED STATES OF AMERICA. No. 271.

*APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.*

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**MOTION BY THE UNITED STATES TO CONTINUE.**

Comes now the Attorney General and moves that the hearing of the above-entitled causes, and each of them, be continued to the next term of the court.

This motion is made in view of conditions set forth in a motion filed with the court in December last for the continuance of several of the same cases over the last term—conditions which still obtain.

Notice of this motion has been given to opposing counsel. So far as we are advised, there is no opposition to the motion in any case except No. 22, in which counsel for the United States Steel Corporation have asked that it be stated to the court that they are opposed to a continuance.

T. W. GREGORY,
*Attorney General.*
G. CARROLL TODD,
*Assistant to the Attorney General.*

OCTOBER, 1918.

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# In the Supreme Court of the United States.

OCTOBER TERM, 1915.

THE UNITED STATES OF AMERICA, APPELLANTS,
v.
LEHIGH VALLEY RAILROAD COMPANY ET AL.
No. 363.

*APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.*

**MOTION BY THE UNITED STATES TO ADVANCE.**

The Solicitor General, on behalf of the United States, respectfully moves the court to advance the above-entitled cause for hearing on a day convenient to the court.

This is a proceeding in equity by the United States to prevent the defendants from further restraining, monopolizing or attempting to monopolize trade and commerce in anthracite coal, in violation of the act of Congress of July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," and also to prevent the defendant Lehigh Valley Rail-

road Company from further transporting in interstate commerce anthracite coal (not intended for its use as a common carrier) in which it has an interest, in violation of a provision of section 1 of the act of Congress entitled "An Act to Regulate Commerce," as amended June 29, 1906, 34 Stat. 584, commonly known as the Commodities Clause.

The petition charges that the Lehigh Valley Railroad Company and its officers and directors and Lehigh Valley Coal Company, Lehigh Valley Coal Sales Company, Coxe Brothers & Company (Inc.), Delaware, Susquehanna & Schuylkill Railroad Company, and New York & Middle Coal Field Railroad & Coal Company have been and are parties to a combination or conspiracy to restrain and monopolize, and have been and are attempting to monopolize and monopolizing, the production, transportation, and sale, in interstate commerce, of anthracite coal from mines and lands in Pennsylvania located along the lines of the Lehigh Valley Railroad Company and moving to markets in other States, especially New York and New Jersey and points on the Great Lakes reached by steamships plying from Buffalo and North Fair Haven.

It is also charged that the Lehigh Valley Railroad Company, in furtherance of the combination and conspiracy, and in violation of the Commodities Clause of the Act to Regulate Commerce aforesaid has been and is transporting in interstate commerce large tonnages of anthracite coal not intended for its

use as a common carrier, in which it has an interest direct or indirect.

The case was brought in the District Court of the United States for the Southern District of New York, which, on February 8, 1915, entered a final decree dismissing the petition. From that decree the Government has appealed to this court.

The case is one of those the expediting of which is provided for by the act of February 11, 1903, 32 Stat. 823, and its early determination is of public importance.

Opposing counsel concur in the request that the case be advanced.

JOHN W. DAVIS,
*Solicitor General.*

JANUARY, 1916.

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